

- **Board of Directors**  
**Water Planning, Quality and Resources Committee**

September 13, 2005 Board Meeting

---

7-7

---

**Subject**

---

Authorize entering into an agreement for the Upper Claremont Heights Conjunctive Use Program with Three Valleys Municipal Water District under Proposition 13

---

**Description**

---

The Governor's Annual Budget Act, released in May 2000, appropriated to the Department of Water Resources local assistance grant funds from Proposition 13. From these funds, the state allocated \$45 million to Metropolitan to help finance Southern California water reliability projects, targeting groundwater conjunctive use projects within Metropolitan's service area. These conjunctive use projects will improve the water supply reliability for the entire region by creating additional dry-year supply, as targeted in the Integrated Water Resources Plan.

Metropolitan issued an initial Request for Proposals to its member agencies in November 2000 seeking participation in groundwater storage programs, and subsequently short-listed nine projects. Five agreements were originally entered into with member agencies and other partners. These agreements are with Long Beach, Central Basin MWD, Inland Empire Utilities Agency, the Municipal Water District of Orange County, Foothill MWD, and Three Valleys MWD. The other projects that had been short-listed at that time were not able to go forward due to increasing costs and feasibility issues. Metropolitan issued a second Request for Proposals in December 2003 for participation in groundwater storage programs to reallocate the unused Proposition 13 funds. In May 2004, staff reported to the Board that three projects submitted by Compton, Long Beach, and Three Valleys MWD had been short-listed to receive funds. The Board authorized entering into an agreement with Compton in January 2005 and with Long Beach in July 2005.

The Upper Claremont Heights Conjunctive Use Program submitted by Three Valleys MWD is recommended to receive \$1,228,375 from the Proposition 13 funds allocated to Metropolitan. This conjunctive use program will enable Metropolitan to store up to 3,000 acre-feet of water in the Upper Claremont Heights Basin when surplus water is available during wet years and produce 1,000 acre-feet per year for three years to meet Three Valleys MWD's water demands during dry, drought, or emergency periods. The program includes construction of a new well and a connection to the San Antonio Spreading Grounds. The total cost of the program facilities is estimated at \$2,684,328 with \$1,228,375 proposed to be provided from Proposition 13 funds and the balance of \$1,455,993 provided by Three Valleys MWD. During the 25-year term of agreement, Metropolitan will pay for costs for operations and maintenance of the well and energy costs for extraction of stored water. Three Valleys MWD would in turn pay the full service untreated water rate and be responsible for the distribution and treatment of extracted water.

The Agreement Summary ([Attachment 1](#)) briefly describes the key articles of the agreement, consistent with Metropolitan's Principles for Groundwater Storage approved by the Board in January 2000 ([Attachment 2](#)). Metropolitan has also prepared the contractual agreement for the Upper Claremont Heights Conjunctive Use Program for execution by the CEO/General Manager. The contractual agreement is available for review at the Executive Secretary's office.

## Policy

---

By Minute Item 43668, dated Aug. 17, 1999, the Board adopted a Statement of Needs for the CALFED Bay-Delta Program.

By Minute Item 43860, dated Jan. 11, 2000, the Board approved strategies for implementing Groundwater Storage Programs within Metropolitan's service area.

By Minute Item 44210, dated Oct. 17, 2000, the Board adopted Resolution 8706 to accept the grant for funds from Proposition 13.

By Minute Item 44427, dated April 10, 2001, the Board gave authority to finalize agreement terms for Groundwater Conjunctive Use Projects using Proposition 13 funds.

Board Report dated May 11, 2004, reported on the selection of groundwater storage programs using remaining Proposition 13 funds.

## California Environmental Quality Act (CEQA)

---

CEQA determination for Option #1:

Pursuant to the provisions of CEQA and the State CEQA Guidelines, the Three Valleys Municipal Water District, acting as Lead Agency, prepared and processed a Final Environmental Impact Report (Final EIR) for the proposed project. The Final EIR was certified and the project was approved by the Lead Agency on July 27, 2005. The Lead Agency also approved the Findings of Fact (findings), and the Mitigation Monitoring and Reporting Program (MMRP). Metropolitan, as a Responsible Agency under CEQA, is required to certify that it has reviewed and considered the information in the certified Final EIR and adopt the Lead Agency's findings and MMRP prior to approval of the formal terms and conditions for the agreement. The environmental documentation is available in the Executive Secretary's Office for review.

The CEQA determination is: Review and consider information provided in the certified 2005 Final EIR and adopt the Lead Agency's findings and MMRP.

CEQA determination for Option #2:

None required

## Board Options/Fiscal Impacts

---

### Option #1

Adopt the CEQA determination and authorize the CEO to enter into an agreement consistent with the Agreement Summary ([Attachment 1](#)) and in a form acceptable to the General Counsel for the Upper Claremont Heights Conjunctive Use Program.

**Fiscal Impact:** There is no fiscal impact to Metropolitan. Approval would contribute toward the implementation of the Integrated Resources Plan and ensure timely disbursement of state funding from Proposition 13.

### Option #2

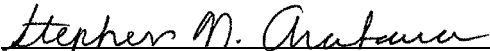
Do not authorize the CEO to enter into an agreement.

**Fiscal Impact:** There is no fiscal impact to Metropolitan. However, failure to award these Proposition 13 funds will result in a loss of benefits for Metropolitan and the Southern California region.

**Staff Recommendation**

---

Option #1

  
\_\_\_\_\_  
Stephen N. Arakawa  
Manager, Water Resource Management

8/11/2005  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Dennis B. Underwood  
CEO/General Manager

8/22/2005  
\_\_\_\_\_  
Date

**Attachment 1 – Agreement Summary for the Upper Claremont Heights Conjunctive Use Program**  
**Attachment 2 – Metropolitan’s Principles for Groundwater Storage**

BLA #3214

**Proposition 13  
Groundwater Storage Program  
Upper Claremont Heights Conjunctive Use Program  
Agreement Summary**

<b>ARTICLE</b>	<b>DESCRIPTION</b>
<b>I. Recitals</b>	Establishes Metropolitan's Board-adopted Groundwater Storage Principles as basis for agreement and includes items as necessary from the participants of the agreement.
<b>II. Effective Date and Term</b>	A. 25-year Term with renewal by mutual consent.
<b>III. Conditions Precedent to Project Funding Obligation</b>	<ul style="list-style-type: none"> <li>A. CEQA</li> <li>B. DWR commitment - DWR agreement conditions fulfilled.</li> <li>C. Permits and Approvals - All authorizations shall have been obtained.</li> <li>D. No litigation.</li> <li>E. No Existing Force Majeure Event.</li> </ul>
<b>IV. Program Planning and Construction</b>	<ul style="list-style-type: none"> <li>A. Planning                             <ul style="list-style-type: none"> <li>1. General description.</li> <li>2. Operational Capacity thresholds.</li> <li>3. Submission of Schedule and Budget – By December 1, 2005, agency shall deliver design and construction schedule and budget to Metropolitan.</li> <li>4. Submission of Plans - By September 1, 2006, agency shall submit completed construction plans and specifications to Metropolitan.</li> <li>5. Metropolitan shall review and approve schedule and budget only. Metropolitan shall submit schedule and budget to DWR for approval.</li> </ul> </li> <li>B. Construction - Program Agency is responsible for the construction. Metropolitan and DWR retain inspection right. Metropolitan has no ownership interest in the Program facilities. Specifies that construction must be complete no later than March 8, 2008.</li> </ul>

**Proposition 13  
Groundwater Storage Program  
Upper Claremont Heights Conjunctive Use Program  
Agreement Summary**

ARTICLE	DESCRIPTION
<p><b>V. Project Construction Funding Procedure (not including Maintenance/Energy Cost Funding)</b></p>	<p>A. Metropolitan Funding Obligation - Sets Metropolitan maximum funding obligation.</p> <p>B. Cost Overruns - Agency liable for overruns.</p> <p>C. Disbursement Protocol.</p> <p>1. Agency submits invoices to Metropolitan for costs incurred consistent with approved schedule and budget. Metropolitan reviews and pays approved invoices or parts thereof. Metropolitan submits the invoice to DWR for reimbursement.</p> <p>2. Agency must certify expenditures.</p>
<p><b>VI. Operation of Project</b></p>	<p>A. Operating Committee.</p> <p>1. Two members from Metropolitan and two members chosen by Agency.</p> <p>2. Meeting of Operating Committee.</p> <p>3. Annual Operating Plan.</p> <p>4. Operating Committee duties.</p> <p>a. Account for storage and extraction.</p> <p>b. Annual reconciliation of water accounts, energy and operations expenses.</p> <p>c. Confirm that operable production capacity was maintained for the program.</p> <p>d. Prepare the Program Annual Operating Plan for the subsequent year.</p> <p>e. Review the maintenance charge.</p> <p>f. Determine the electrical power unit rate.</p>

**Proposition 13  
Groundwater Storage Program  
Upper Claremont Heights Conjunctive Use Program  
Agreement Summary**

ARTICLE	DESCRIPTION
	<p>B. Program Agency Obligations.</p> <ol style="list-style-type: none"> <li>1. Operate and maintain facilities in good condition.</li> <li>2. Provide for repairs.</li> <li>3. Maintain the Agency’s facilities as necessary.</li> <li>4. Certify water delivered into Metropolitan account.</li> <li>5. Operate Facilities to extract stored water at Metropolitan’s call.</li> <li>6. Report Agency’s total active and inactive annual extraction capacity.</li> </ol>
	<p>C. Metropolitan Obligations.</p> <ol style="list-style-type: none"> <li>1. Pay for operation and maintenance of Program facilities.</li> <li>2. Pay for power to pump water.</li> <li>3. Pay annual administrative fee (ratio of \$4 per acre-foot of annual yield).</li> </ol> <p>D. Payment of O&amp;M and Electrical Costs: payment in form of credit on water bill.</p> <p>E. Annual Reconciliation - Reconcile actual storage and O&amp;M costs.</p>
<p><b>VII. Groundwater Storage and Extraction</b></p>	<p>A. Storage of water - Metropolitan can store up to 25 percent of its total capacity rights per year on fifteen days notice.</p> <p>B. Agency will certify storage and extraction deliveries.</p> <p>C. Extraction of Stored Water - Metropolitan can request extraction of up to 33 percent of its total capacity rights per year on fifteen days notice to meet water demands of the Agency.</p> <p>D. Payment for Stored Water - Agency will pay full service untreated water rate.</p>

**Proposition 13  
Groundwater Storage Program  
Upper Claremont Heights Conjunctive Use Program  
Agreement Summary**

<b>ARTICLE</b>	<b>DESCRIPTION</b>
<b>VIII. Other Uses of Facilities</b>	A. Agencies may use facilities, so long as excess operable production capacity is maintained for performance under the agreement. Agencies responsible for O&M when they use facilities.
<b>IX. Representations, Warranties and Affirmative Covenants of Parties</b>	
<b>X. Record Keeping, Reporting, Inspection and Audit Provisions</b>	
<b>XI. Indemnity</b>	A. General Indemnity. B. Program Agency indemnity of Metropolitan. C. Metropolitan indemnity of Agency.
<b>XII. Insurance</b>	A. General Required Coverage. B. Specific Policy Requirements. C. Deductibles/Self Insured Retentions - Metropolitan copies of insurance certificates; acceptability of Insurers. D. Environmental Liability Insurance - Commercially available to cover on- and off-site clean up of pollution arising from the program and losses from tort claims. Metropolitan and Agency share cost.
<b>XIII. Dispute Resolution; Defaults and Remedies</b>	A. Dispute Resolution - Disputes will be handled by (1) Operating Committee, (2) Mutually acceptable consultant, or (3) Arbitration. B. Defaults and Remedies – Failure of Agency to perform will be assessed Nonperformance Penalty of two times the Tier 2 firm water rate unless it is agreed that complete performance was precluded by unanticipated operational or water quality considerations. In such case, Agency shall set out agreeable plan and schedule to correct the deficiency. C. Termination - If there is a breach of contract by the Agency, Metropolitan may terminate with written notice. Agency to purchase stored water over a five-year period and to reimburse all Program Funds advanced by Metropolitan pursuant to the Agreement.

**Proposition 13  
Groundwater Storage Program  
Upper Claremont Heights Conjunctive Use Program  
Agreement Summary**

ARTICLE	DESCRIPTION
	D. Remedies are Cumulative.
<b>XIV. Force Majeure Events</b>	A. Excuse to Performance. B. Responding to Force Majeure Events.
<b>XV. Miscellaneous</b>	A. Miscellaneous Legal Provisions.
<b>Exhibits</b>	A. DWR Funding Letter. B. Request for Proposal. C. Agency Proposal. D. Metropolitan Award Letter. E. Procedure for Initial Calculation of Metropolitan Water Account (not applicable to this agreement). F. Accounting Methodology for Storage and Extraction. G. Performance Criteria. H. Description of Program Facilities.



### **Metropolitan's Principles for Groundwater Storage**

- Regional Benefit – Groundwater storage programs must provide regional benefits to increase dry-year supply (in accordance with the Board's Water Surplus and Drought Management Plan) and reduce capital costs associated with Metropolitan's distribution system. Benefits must outweigh the risks involved with developing the program.
- Partnership – Groundwater storage programs must have strong local support in order to be successful. Partnership might also involve coordination of funds from other sources (e.g., state/federal funds).
- Address Local Needs – When developing groundwater storage programs, Metropolitan must consider the individual needs of the groundwater basin and local communities. Programs should consider issues such as water quality, reliability of supply financial benefits and groundwater level.
- No Unmitigated Negative Water Supply or Water Quality Impact – Groundwater storage programs should be designed so there are no negative water quality or supply reliability impacts to Metropolitan's member agencies.
- Financial Integrity – Programs should ensure the financial integrity of Metropolitan and its member agencies consistent with the Strategic Plan Policy Principles (Principles), which was approved by the Board on December 14, 1999. The Principles will be included in a new Strategic Plan to be adopted next year. Investments made by Metropolitan for storage will not be used by local agencies to reduce their demands for Metropolitan's imported supply in a manner that threatens financial integrity. Participating member agencies would commit to the purchase of fixed amounts of imported water from Metropolitan.
- Phased Approach – Groundwater storage programs should be implemented in phases. At first, smaller-scale programs should be designed to meet overlying demand in lieu of Metropolitan's surface deliveries. As the programs are operated, levels of trust can be established and technical issues resolved. If successful, these programs can be expanded to the point where groundwater can be exported to other parts of the service area.
- Shared Risk – There are risks associated with developing any water resource program, including groundwater storage. Metropolitan should be willing to share the appropriate risk of implementing groundwater storage programs with local entities to the extent benefits outweigh the risks.

**MWD Board Adoption: January 2000**